

EXHIBIT 7

1 ROY THOMAS
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4

5 GARY FRIEDRICH ENTERPRISES, LLC, et al.,

6 Plaintiffs,

7 vs.

Civil Action No.

08-CV-01533 (BSJ) (JCF)

8 MARVEL ENTERPRISES, INC., et al.,

9 Defendants.
10

— — —

11 Videotaped deposition of ROY THOMAS,
12 VOLUME II, taken on behalf of Defendants, before
13 Rita A. DeRouen, Registered Professional Reporter
14 and Notary Public, at the Radisson Hotel, 2100
15 Bush River Road, Board Room, Columbia, South
16 Carolina, on the 13th day of April, 2011,
17 commencing at 11:01 a.m.
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24

25 TSG Job # 37618

1 ROY THOMAS

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21 Also Present: Donald Graves, CLVS

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22
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24
25 — — —

ROY THOMAS

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2 do any -- much real staff writing in that
3 madhouse, it was just too noisy and clamorous, and
4 I wasn't the kind of person who could write under
5 those circumstances.

6 Q. Were you paid a -- was -- was the
7 staff writing position a salaried position?

8 A. Yes.

9 Q. And I believe you testified that you
10 received separate compensation for the freelance
11 work that you -- for the freelance writing that
12 you did during this time period?

13 A. Yes. It began almost im --
14 immediately really.

15 Q. And how were you compensated for the
16 freelance work that you did?

17 A. Well, without remembering every
18 single check as to how often, I know there were
19 just checks that every -- I don't remember if they
20 were every week or second week, they would have a
21 separate check that would come in for whatever
22 work you had vouchered as freelance during that
23 period.

24 Q. Were -- were you paid based on a --
25 on a page rate for that work?

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2 individual writer and artist.

3 It generally was a page, more likely
4 two or three pages, of typed copy that told the
5 basic story. It didn't break it down into panels
6 or pages, didn't include much, if any, of the
7 actual dialogue, but it told the basic story,
8 which the artist was then supposed to translate
9 into pictures.

10 Of course, as I said, this was often
11 done -- increasingly and in various situations, it
12 was also done verbally without something being
13 written down. It depended on the relationship
14 between the artist and the writer. If the artist
15 really wanted a written plot, he would get one,
16 some would just as soon not have one.

17 Q. The next step in the process that you
18 described during your testimony yesterday was
19 where the artist would break down the plot into
20 actual pages of the story, quote, adding whatever
21 he felt he needed to add to flesh out the story.

22 Do you recall that?

23 A. Yes.

24 Q. And you also testified that, at that
25 point, materials would be what you referred to as

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2 trafficked through the office to various extents?

3 A. Yes.

4 MR. KRAMER: Object to the form of
5 the question, that misstates his prior testimony.

6 BY MS. KLEINICK:

7 Q. What did you mean by "trafficked
8 through the office"?

9 A. Well, particularly, it could have
10 even been that the plot was sent -- was mailed
11 from the office if the person was in there and
12 gave -- and turned it in.

13 But, especially by the time the
14 artist had drawn the pencil drawings, they -- they
15 had to either mail them or physically bring them
16 by the office, which meant that the production
17 manager and a couple of people, you know, working
18 under him would -- would take care of it, they
19 would take care of it so that it went to the next
20 person, which was generally the letterer unless
21 Stan or I or someone said that they needed to see
22 the script or the artwork before it went to --
23 before it went to the letterer.

24 Again, that depended on the trust in
25 the artist and various other factors as to how

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2 closely and at what stage something was looked
3 at.

4 Oh, and I also stated yesterday that
5 trafficking sometimes was just verbal directions
6 and that the artist might be told, to save time,
7 to -- and some of them just hand-delivered it
8 because they were neighbors or whatever, to give
9 the art directly to -- the art and the script
10 directly to the letterer.

11 Once the -- I'm sorry, maybe I
12 misstated. First we had to have the art come back
13 to the office for the writer to do the dialogue,
14 and that went -- then it went to the letterer. In
15 each -- in each step it was trafficked by the
16 office either physically or by phone.

17 Q. I think that you testified that the
18 -- that after the materials went to the
19 letterer --

20 A. Uh-huh.

21 Q. -- then it would go -- they would go
22 to the inker; is that correct?

23 A. Yes. Either directly mailed by the
24 letterer or maybe delivered to him if -- or picked
25 up by him or trafficked through the office, either

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2 basis on his own, he might be thinking a little
3 ahead.

4 Of course, that was then subject to
5 my or to Stan Lee's veto when they suggested a
6 story line. It was certainly not part of their
7 job to do.

8 BY MS. KLEINICK:

9 Q. I asked you -- my question was: Are
10 you aware of any instance where that happened?

11 A. I'm -- I'm not aware of any instance
12 where it happened.

13 Q. To your knowledge, at any point
14 between July of 1965 and the end of 1972, did
15 Marvel ever buy a plot or synopsis or script that
16 was created on spec by a freelance writer or
17 artist?

18 MR. KRAMER: Object to the form, lack
19 of foundation.

20 THE WITNESS: I -- I can't think of
21 one.

22 BY MS. KLEINICK:

23 Q. During the time period between July
24 of 1965 and the end of 1972, after a writer --
25 strike that.

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2 During the time period between July
3 of 1965 and the end of 1972, were there any
4 production deadlines set with respect to the comic
5 book issues that were being published by Marvel?

6 MR. KRAMER: Object to form, lack of
7 foundation.

8 THE WITNESS: They always had
9 deadlines. Everything -- everything had a
10 deadline really.

11 BY MS. KLEINICK:

12 Q. Do you know who set those deadlines?

13 A. They were set on behalf of the -- the
14 editor, Stan Lee, until maybe the very end of that
15 period by the production manager on -- on the
16 editor's authority.

17 Q. And were there any restrictions on
18 the number of pages for particular comic books
19 during this time period?

20 MR. KRAMER: Object to form, lack of
21 foundation.

22 THE WITNESS: Most of the stories had
23 a definite page length, which would vary from time
24 to time, 20, 21, or whatever pages. We did have a
25 few stories -- comics we called mystery comics

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2 with -- without continuing characters in which
3 there was more flexibility, it might be a five-
4 page story, a seven-page story, or whatever.

5 The writer was generally given some
6 page length when he was told to write the story.
7 Occasionally he might find some excuse and get
8 approval to vary it, but there was -- there was
9 always some sort of limitation there.

10 BY MS. KLEINICK:

11 Q. And during the July of 1965 to the
12 end of 1972 time period, who, if anyone, at Marvel
13 decided which books would be published?

14 MR. KRAMER: Object to form and
15 foundation.

16 THE WITNESS: It was always -- the
17 ultimate say, as far as I know, was the publisher,
18 who, up through most -- through most of that time
19 was Martin Goodman, both before and for some time
20 after he sold the company.

21 There was a period near the end of
22 that time for a year or so, maybe it was a little
23 less than that year, not too much more, when his
24 son, Charles Chip Goodman, was the -- was the
25 publisher, and he had that decision.

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2 That would have been at the very end
3 of that period. Stan increasingly had authority
4 to do things, but it was always rather vague. He
5 still ultimately had to have the publisher's
6 authority to start a book or kill a book or do
7 anything of that sort.

8 BY MS. KLEINICK:

9 Q. What do you mean by "start a book"?

10 A. To authorize a new comic book title
11 as opposed to an existing one.

12 Q. When you were the assistant editor at
13 Marvel, did you have authority to make changes to
14 the materials that were submitted for publication
15 by a freelance writer or artist if you believed
16 changes were appropriate?

17 MR. KRAMER: Object to form and
18 foundation.

19 THE WITNESS: I have to ask, did you
20 mean strictly assistant or after I was also called
21 associate editor after about '66 or '67? I wanted
22 to make sure when I answered it.

23 BY MS. KLEINICK:

24 Q. I was referring just to the period
25 when you were assistant editor.

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2 things when he felt there was a good reason, it
3 wasn't a good enough name or something along those
4 lines, something might come to his attention.

5 Q. You testified that between July of
6 1965 and the end of 1972 freelance writers were
7 paid based on a page rate for the writing that
8 they did for Marvel; is that correct?

9 A. Yes.

10 Q. Do you know who established the page
11 rate that any particular writer would be paid
12 during this time period?

13 MR. KRAMER: Object to form, lack of
14 foundation.

15 THE WITNESS: Ultimately, it was the
16 publisher. Stan could make recommendations. And
17 I believe, again, his recommendations were maybe a
18 little more -- had a little more force as time
19 went on, but it was ultimately the publisher's
20 responsibility, they all had to be approved by
21 him, whether it be either Martin Goodman or Chip
22 Goodman.

23 BY MS. KLEINICK:

24 Q. For the period from July 1965 to the
25 end of '72, with respect to your freelance writing

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2 work, were there any general time frames in
3 relationship to time that the issue was dialogued
4 that you were paid with respect to that issue?

5 MR. KRAMER: Object to form.

6 THE WITNESS: It would depend on when
7 I managed to get the -- the voucher in. It was my
8 responsibility, as it was other writers, to fill
9 out vouchers and put them in, and they would go
10 down -- go to be signed at some stage during the
11 week and then we would be paid.

12 Generally speaking, if I recall
13 correctly, we usually put in the writing rate
14 after the whole thing was written as opposed to
15 putting in something when the plot was turned in.

16 BY MS. KLEINICK:

17 Q. During this time period, with respect
18 to your freelance writing work, were you typically
19 paid before the issue hit the stands?

20 A. Usually I would have been because
21 they -- because by the time I -- from the time
22 that I might have finished the story until it was
23 on sale was going to be at least two or three
24 months, possibly a little more, possibly even a
25 couple of months more.

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2 So if -- even if I missed a pay
3 period, it was only going to be a couple weeks or
4 so, two or three weeks, before I was paid. So I
5 was almost always paid before it was on sale.

6 Q. And during this time period with
7 respect to your freelance writing work, did you
8 receive the same page rate regardless of whether
9 the issue ultimately sold well or not?

10 A. Yes, I did.

11 Q. Do you have any understanding of
12 whether other freelance writers who submitted
13 materials to Marvel during this time were also
14 paid the same -- their same page rate regardless
15 of whether the issue they worked on ultimately
16 sold well or not?

17 MR. KRAMER: Objection. Object to
18 form and lack of foundation.

19 THE WITNESS: Yes. It was a straight
20 page rate system.

21 BY MS. KLEINICK:

22 Q. When you first joined Marvel in the
23 -- in 1965, was it your understanding that the
24 materials that you were submitting for publication
25 as a freelance writer were works-for-hire owned by

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2 hire," but it was just another term for the way I
3 felt I had been working all along.

4 Q. So what you understood -- or your
5 understanding was that the work that you were
6 creating, to the extent you would have any rights
7 in it, you were giving those rights up to
8 Marvel --

9 MS. KLEINICK: Objection.

10 BY MR. KRAMER:

11 Q. -- at all times?

12 MS. KLEINICK: Mischaracterizes his
13 testimony.

14 THE WITNESS: The back of the check
15 said that I was -- that by signing the check I was
16 signing over my rights to -- to Marvel.

17 BY MR. KRAMER:

18 Q. And later, in the mid 1970s when the
19 term "work-for-hire" started banging around, you
20 understood that to refer to the same general
21 situation that had already existed?

22 MS. KLEINICK: Objection.

23 THE WITNESS: Yes, I did.

24 BY MR. KRAMER:

25 Q. And do you understand that work-for-

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2 C E R T I F I C A T E

3
4
5 SOUTH CAROLINA:

6 RICHLAND COUNTY:
7
8

9 I hereby certify that the foregoing
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11 and the questions and answers thereto were reduced
12 to that written page under my direction; that the
13 foregoing pages 1 through 168 represent a true and
14 correct transcript of the evidence given. I
15 further certify that I am not in any way
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19 Council of South Carolina, I make the following
20 disclosure:

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11 case.

12 This, the 18th day of April, 2011.

13 *Rita Deroen*
14

15 RITA A. DEROUEN

16 My Commission Expires

17 August 12, 2019
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